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Recommended Citation

Utah Code Annotated Title 42 to 43 (Michie, 1960)

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TITLE 42

NAMES

- Chapter 1. Change of Name, 42-1-1 to 42-1-3.
2. Conducting Business under Assumed Name, 42-2-1 to 42-2-4.
3. Registration of Farm Names, 42-3-1 to 42-3-5.

CHAPTER 1

CHANGE OF NAME

- Section 42-1-1. By petition to district court—Contents.
42-1-2. Notice of hearing—Order of change.
42-1-3. Effect of proceedings.

42-1-1. By petition to district court—Contents.—Any natural person, desiring to change his name, may file a petition therefor in the district court of the county where he resides, setting forth:

- (1) The cause for which the change of name is sought.
- (2) The name proposed.
- (3) That he has been a bona fide resident of the county for the year immediately prior to the filing of the petition.

History: R. S. 1898 & C. L. 1907, § 1545;
C. L. 1917, § 4000; R. S. 1933 & C. 1943,
58-1-1.

Cross-Reference.

Change of name by pharmacists, 58-17-9.

Collateral References.

Names—20.
65 C.J.S. Names § 11.
Generally, 38 Am. Jur. 594, Names § 1,
et seq.

42-1-2. Notice of hearing—Order of change.—The court shall order what, if any, notice shall be given of the hearing, and after the giving of such notice, if any, may order the change of name as requested, upon proof in open court of the allegations of the petition and that there exists proper cause for granting the same.

History: R. S. 1898 & C. L. 1907, § 1546;
C. L. 1917, § 4001; R. S. 1933 & C. 1943,
58-1-2.

42-1-3. Effect of proceedings.—Such proceedings shall in no manner affect any legal action or proceeding then pending, or any right, title or interest whatsoever.

History: R. S. 1898 & C. L. 1907, § 1547;
C. L. 1917, § 4002; R. S. 1933 & C. 1943,
58-1-3.

CHAPTER 2

CONDUCTING BUSINESS UNDER ASSUMED NAME

- Section 42-2-1. Affidavit of assumed and of true name—Filing.
42-2-2. Index—Fees—Evidence.
42-2-3. Corporate and partnership names not affected.
42-2-4. Penalty.

42-2-1. Affidavit of assumed and of true name—Filing.—No person or persons shall carry on or conduct or transact business in this state under an assumed name, or under any designation, name or style, corporate, partnership or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the county clerk of the county in which the principal place of business is, or is to be, located, an affidavit setting forth the name under which such business is, or is to be, conducted or transacted, and the true full name or names of the person or persons owning, conducting or transacting the same, the location of the principal place of business, with the post-office address or addresses of such person or persons. Such affidavit shall be executed by the person or persons so conducting or intending to conduct such business.

History: L. 1913, ch. 25, § 1; C. L. 1917, § 4005; R. S. 1933 & C. 1943, 58-2-1.

Comparable Provisions.

California Civ. Code, § 2466 (certificate to be filed with county clerk stating name in full and place of residence of person transacting business under fictitious name, and stating names in full of all members of partnership and their places of residence; certificate must be published in newspaper).

Idaho Code 1947, § 53-501 (similar).

Iowa Code 1950, § 547.1 (requiring that verified statement be filed with county recorder by person or copartnership engaging in or conducting business under trade name or assumed name of any character other than true surname of each person owning or having interest in the business); § 547.2 (verified statement must be filed as to change in ownership or persons interested therein; original owners are liable for all obligations until such certificate of change is filed).

Cross-Reference.

Signing negotiable instruments with assumed or trade name, 44-1-19.

1. Purpose of statute.

This statute is primarily for the convenience of the public, and those dealing with partnerships and other unincorporated associations. *Oakason v. Lisbon Valley Uranium Co.*, 154 F. Supp. 692, 693.

2. Application of statute.

Recovery for services rendered should not be precluded because there was not

substantial compliance with this section and section 42-2-4 if plaintiffs are otherwise entitled to judgment. *Oakason v. Lisbon Valley Uranium Co.*, 154 F. Supp. 692, 693.

3. Affidavit.

The purpose of the filing of such affidavits or certificates is to give notice to the public as to the name or names of the persons conducting or owning the business and to protect those who transact business with persons under the assumed name. *Putnam v. Industrial Comm.*, 80 U. 187, 208, 14 P. 2d 973.

This affidavit is generally made on a printed blank furnished by the county clerk, and must comply with this statute. A certified copy of the affidavit and of its filing is admissible in evidence and is prima facie evidence of the facts therein recited. *Putnam v. Industrial Comm.*, 80 U. 187, 192, 208, 14 P. 2d 973.

4. Appellate practice.

Where case originates in city court, but is appealed to district court, and defendant sets up failure to comply with this section in city court only, but does not repeat same in district court, Supreme Court, on appeal from later court, will regard objection as waived. *Christensen v. Johnson*, 90 U. 273, 277, 61 P. 2d 597.

Decisions from other Jurisdictions.**— Idaho.**

Idaho statute, § 53-501 et seq., has no application to corporations duly organized under laws of Idaho, or to any corporation

organized under the laws of any other state, and lawfully doing business in Idaho. *Colorado Milling & Elevator Co. v. Proctor*, 58 Idaho 578, 76 P. 2d 438.

— Iowa.

Person who operates business under trade name or as member of joint enterprise is civilly liable for its obligations. *State v. Doudna*, 226 Iowa 351, 284 N. W. 113.

Collateral References.

Names ⇨ 10.

65 C.J.S. Names § 9.

Fictitious or assumed name, 38 Am. Jur. 600, Names § 11 et seq.

Construction and effect of statutes as to doing business under an assumed or fictitious name or designation not showing the names of the persons interested, 45 A. L. R. 198, 59 A. L. R. 455.

Personal liability of persons doing business in the name of a dormant corporation, 18 A. L. R. 282.

Validity and construction of constitutional or statutory provisions which prohibit use by corporation or partnership, as a part of its name, of certain described words giving impression that it is subject to governmental control, 63 A. L. R. 1049.

42-2-2. Index—Fees—Evidence.—County clerks shall keep an alphabetical index of all persons filing the affidavits provided for herein, and for indexing and filing each affidavit they shall collect a fee of \$1. A copy of any such affidavit certified by the county clerk in whose office the same shall be filed shall be presumptive evidence of the facts therein contained.

History: L. 1913, ch. 25, § 3; C. L. 1917, § 4007; R. S. 1933 & C. 1943, 58-2-2.

42-2-3. Corporate and partnership names not affected.—This chapter shall in no way affect or apply to any corporation duly organized under the laws of this state, or under the laws of any other state and lawfully doing business in this state, nor shall this chapter prevent the lawful use of a partnership name.

History: L. 1913, ch. 25, § 4; C. L. 1917, § 4008; R. S. 1933 & C. 1943, 58-2-3.

Comparable Provision.

Idaho Code 1947, § 53-504 (similar, but coupled with following proviso: "provided,

that such partnership designation, name, or style shall include the true and real name or names of all the parties conducting such business or having an interest therein").

42-2-4. Penalty.—Any person who fails to comply with the provisions of this chapter is guilty of a misdemeanor.

History: L. 1913, ch. 25, § 5; C. L. 1917, § 4009; R. S. 1933 & C. 1943, 58-2-4.

1. Effect of noncompliance.

Failure to comply with the requirements of this chapter may be raised by demurrer to complaint. *Christensen v. Johnson*, 90 U. 273, 61 P. 2d 597.

CHAPTER 3

REGISTRATION OF FARM NAMES

- Section 42-3-1. Commissioner of agriculture to register names.
 42-3-2. Recording fee.
 42-3-3. Transfer of name.
 42-3-4. Cancellation by owner.
 42-3-5. Use of name by another—Penalty.

42-3-1. Commissioner of agriculture to register names.—Any owner of a farm in this state may have the name of his farm, together with a brief description of his lands to which such name applies, recorded in a register

kept for the purpose in the office of the commissioner of agriculture, and the commissioner of agriculture shall furnish to such landowner a proper certificate setting forth such name and a brief description of such lands. When any name shall have been so recorded it shall not be recorded as the name of any other farm.

History: L. 1917, ch. 18, § 1; C. L. 1917, § 4010; R. S. 1933 & C. 1943, 58-3-1.

Iowa Code 1950, § 557.22 (recorded in register kept by county recorder); § 557.23 (such name not to be recorded as name of any other farm in same county).

Comparable Provisions.

Idaho Code 1947, § 31-2403 (farm owner may record name of farm in register to be kept by county recorder; such name not to be recorded as name of any other farm in same county).

Collateral References.

Agriculture 1.
3 C.J.S. Agriculture § 2.

42-3-2. Recording fee.—Any person having the name of his farm so recorded shall first pay to the commissioner of agriculture a fee of \$2, which fee shall be transmitted to the state treasurer as are other fees.

History: L. 1917, ch. 18, § 2; C. L. 1917, § 4011; R. S. 1933 & C. 1943, 58-3-2.

42-3-3. Transfer of name.—When any owner of a farm, the name of which has been recorded as provided in this chapter, transfers by deed or otherwise the whole of such farm, the transfer may include the registered name thereof; but, if the owner shall transfer only a portion of such farm, the registered name thereof shall not be deemed transferred, unless so stated in the conveyance.

History: L. 1917, ch. 18, § 3; C. L. 1917, § 4012; R. S. 1933 & C. 1943, 58-3-3.

Comparable Provision.

Iowa Code 1950, § 557.25 (substantially identical).

42-3-4. Cancellation by owner.—When any owner of a registered farm desires to cancel its registered name he shall write on the back of the certificate the following: "This name is canceled, and I hereby release all rights thereunder," and shall sign such statement in the presence of a witness and file the same in the office of the commissioner of agriculture. For such filing the commissioner of agriculture shall charge a fee of 25 cents, which shall be paid to the state treasurer as other fees. The commissioner of agriculture shall, when such certificate so endorsed has been filed in his office, write on the margin of the register of such name the word "canceled."

History: L. 1917, ch. 18, § 4; C. L. 1917, § 4013; R. S. 1933 & C. 1943, 58-3-4.

42-3-5. Use of name by another—Penalty.—It is a misdemeanor for any person other than the person in whose name a farm is registered to use such registered name for any other farm.

History: L. 1917, ch. 18, § 5; C. L. 1917, § 4014; R. S. 1933 & C. 1943, 58-3-5.

TITLE 43

NEGOTIABLE CERTIFICATES

Chapter 1. General Provisions, 43-1-1 to 43-1-3.

CHAPTER 1

GENERAL PROVISIONS

- Section 43-1-1. "Security receipt," "equipment trust certificate" defined.
43-1-2. Transfer—By delivery—By endorsement—Rights of transferee.
43-1-3. Restrictive construction of title—Effective date.

43-1-1. "Security receipt," "equipment trust certificate" defined.—For the purpose of this title:

The term "security receipt" means any writing in and by which the signer sets forth that the person named therein or the bearer, is entitled to receive a specified principal amount, par value, or number, of bonds, notes, debentures, shares of stock, voting-trust certificates for shares of stock, scrip or other security of any kind or character, identified or described therein, absolutely or when, as or if, received by the signer, or upon any other contingency stated or referred to therein.

The term "equipment trust certificate" means any writing in which the signer sets forth that the person named therein or the bearer is entitled to an interest in, or a share of, a specified principal amount, or par value in money, in a trust under an identified trust indenture, pursuant to the terms of which title to rolling stock or equipment for use by or on the line or route of a common carrier, or to vessels or other marine equipment, is held in trust for the benefit of all the holders of such interests or shares.

The character of any such security receipt, or equipment trust certificate, is not affected by including therein other provisions which do not limit the right of transfer or the negotiable quality thereof as in this title provided.

History: L. 1929, ch. 53, § 1; R. S. 1933 **Collateral References.**
& C. 1943, 60-0-1. Railroads⇒148.
74 C.J.S. Railroads § 247.

43-1-2. Transfer—By delivery—By endorsement—Rights of transferee.—Title to any security receipt, or equipment trust certificate, which by its terms entitles the bearer to the benefits thereof, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired.

Title to any security receipt, or equipment trust certificate, which by its terms entitles the person named therein to the benefits thereof, and which provides in substance that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred

by delivery by any person in possession of the same, howsoever such possession may have been acquired, if endorsed in blank or, if it is endorsed to a specified person, by delivery by such other person.

A person to whom title is so transferred, who takes any such instrument for present or antecedent value, without notice of prior defenses, equities or claims of ownership enforceable against the transferor, shall have absolute title thereto free of any defenses enforceable against, or claims of ownership of, the signer or any prior holder. The holder of any such security receipt, or equipment trust certificate, unless the same has been endorsed to a specified person other than the holder and has not been endorsed in blank by such specified person, shall be deemed *prima facie* to have title thereto as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired title as a holder for value and without notice as aforesaid.

The provisions of this section shall not be applicable to the transfer of any security receipt, or equipment trust certificate, when it is shown that such transfer was made after the date fixed therein for performance by the signer of his obligations thereunder, or, if no date is so fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signer became obligated to perform.

History: L. 1929, ch. 53, § 2; R. S. 1933
& C. 1943, 60-0-2.

43-1-3. Restrictive construction of title—Effective date.—This title shall not be construed to limit or impair the negotiability or quasi negotiability, by agreement or otherwise, of any instrument whether or not defined herein. The provisions of this title shall apply only to instruments issued after the 13th day of May, 1929.

History: L. 1929, ch. 53, § 3; R. S. 1933
& C. 1943, 60-0-3.

Collateral References.

Railroads⇒148.

74 C.J.S. Railroads § 247.